

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

DANIEL MARIANO,

No. 2:15-cv-0157-SAB

Plaintiff,

V.

CAROLYN W. COLVIN, Commissioner
of Social Security,

Defendant.

**ORDER ADOPTING, IN PART,
REPORT AND
RECOMMENDATION;
DIRECTING PLAINTIFF TO
PROPERLY SERVE
COMPLAINT**

Before the Court is the Report and Recommendation to Dismiss, Without Prejudice, for Lack of Service, ECF No. 10, which was filed on December 31, 2015.

Magistrate Judge John Rodgers recommends dismissing this action for failing to serve the Office of the United States Attorney. No response to the R & R has been timely filed; however, Plaintiff filed an Amended Complaint on January 5, 2016. It appears from the record that Plaintiff has made an attempt to serve his complaint, *see* ECF No. 9.¹ Nevertheless, Plaintiff's efforts do not comport with Fed. R. Civ. P. 4(i), which states:

¹ It appears that Plaintiff mailed a copy of his complaint via certified mail to the Social Security Administration, Office of Disability Adjudication and Review, in **ORDER ADOPTING, IN PART, REPORT AND RECOMMENDATION; DIRECTING PLAINTIFF TO PROPERLY SERVE COMPLAINT ~ 1**

1 **(i) Serving the United States and Its Agencies, Corporations,
2 Officers, or Employees.**

3 **(1) *United States.*** To serve the United States, a party must:

4 (A)(i) deliver a copy of the summons and of the complaint to the
5 United States attorney for the district where the action is brought--or
6 to an assistant United States attorney or clerical employee whom the
7 United States attorney designates in a writing filed with the court
clerk--or

8 (ii) send a copy of each by registered or certified mail to the
9 civil-process clerk at the United States attorney's office;

10 (B) send a copy of each by registered or certified mail to the
11 Attorney General of the United States at Washington, D.C.; and

12 (C) if the action challenges an order of a nonparty agency or
13 officer of the United States, send a copy of each by registered or
14 certified mail to the agency or officer.

15 **(2) *Agency; Corporation; Officer or Employee Sued in an Official***

16 ***Capacity.*** To serve a United States agency or corporation, or a United
17 States officer or employee sued only in an official capacity, a party
18 must serve the United States and also send a copy of the summons and
19 of the complaint by registered or certified mail to the agency,
20 corporation, officer, or employee.

21 **(3) *Officer or Employee Sued Individually.*** To serve a United States
22 officer or employee sued in an individual capacity for an act or
23 omission occurring in connection with duties performed on the United
24 States' behalf (whether or not the officer or employee is also sued in an
25 official capacity), a party must serve the United States and also serve
26 the officer or employee under Rule 4(e), (f), or (g).

27 **(4) *Extending Time.*** The court must allow a party a reasonable time to
28 cure its failure to:

29 (A) serve a person required to be served under Rule 4(i)(2), if the
30 party has served either the United States attorney or the Attorney
31 General of the United States; or

32 (B) serve the United States under Rule 4(i)(3), if the party has
33 served the United States officer or employee.

34 Spokane, Washington, and also to the Social Security Administration, Office of
35 Disability Adjudication and Review in Falls Church, Virginia.

36 **ORDER ADOPTING, IN PART, REPORT AND RECOMMENDATION;
37 DIRECTING PLAINTIFF TO PROPERLY SERVE COMPLAINT ~ 2**

1 The Court agrees with Magistrate Judge Rodgers that the court file
2 indicates that Plaintiff has not complied with Fed. R. Civ. P. 4(i)(1) and that
3 the complaint has not been properly serviced on Defendant. Nevertheless,
4 the Court will give Plaintiff one more try to cure the defect in service.
5 Plaintiff is instructed that failure to follow Fed. R. Civ. P. 4(i)(1)(A) will
6 result in the dismissal of this action, without prejudice.

7 Accordingly, **IT IS HEREBY ORDERED:**

- 8 1. The Court adopts, in part, the Report and Recommendation, ECF No. 10.
9 2. Within **14 days** from the date of this Order, Plaintiff is directed to
10 comply with the Fed. R. Civ. P. 4(i) and file with the Court proof that
11 Plaintiff's Complaint and/or Amended Complaint has been properly served.

12 **IT IS SO ORDERED.** The District Court Executive is hereby directed to
13 file this Order and provide copies to counsel.

14 **DATED** this 29th day of February, 2016.



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18 Stanley A. Bastian

19 Stanley A. Bastian
20 United States District Judge
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